

(2) A 404 filing is submitted pursuant to § 151.5(c) or a 404S is submitted pursuant to § 151.5(f), the filing must be submitted not later than 9 a.m. on the third business day after a position has exceeded the level in a Referenced Contract for the first time and not later than the third business day following each calendar month in which the person exceeded such levels;

(3) The filing is submitted pursuant to § 151.6, then the 401 or 404, or their respective alternatives as provided for under § 151.6(d), shall be submitted within ten business days following the quarter in which the person holds a position in excess in the visibility levels provided in § 151.6(a); or

(4) A notice of disaggregation is filed pursuant to § 151.7(h), in which case the notice shall be submitted within five business days of when the person claims a disaggregation exemption.

(e) When the reporting entity discovers errors or omissions to past reports, the entity so notifies the Commission and files corrected information in a form and manner and at a time as may be instructed by the Commission or its designee.

§ 151.11 Designated contract market and swap execution facility position limits and accountability rules.

(a) *Spot-month limits.* (1) For all Referenced Contracts executed pursuant to their rules, swap execution facilities that are trading facilities and designated contract markets shall adopt, enforce, and, establish rules and procedures for monitoring and enforcing spot-month position limits set at levels no greater than those established by the Commission under § 151.4.

(2) For all agreements, contracts, or transactions executed pursuant to their rules that are not subject to the limits set forth in paragraph (a)(1) of this section, it shall be an acceptable practice for swap execution facilities that are trading facilities and designated contract markets to adopt, enforce, and establish rules and procedures for monitoring and enforcing spot-month position limits set at levels no greater than 25 percent of estimated deliverable supply, consistent with Commission guidance set forth in this title.

(b) *Non-spot-month limits*—(1) *Referenced Contracts.* For Referenced Contracts executed pursuant to their rules, swap execution facilities that are trading facilities and designated contract markets shall adopt enforce, and establish rules and procedures for monitoring and enforcing single month and all-months limits at levels no greater than the position limits established by the Commission under § 151.4(d)(3) or (4).

(2) *Non-referenced contracts.* For all other agreements, contracts, or transactions executed pursuant to their rules that are not subject to the limits set forth in § 151.4, except as provided in § 151.11(b)(3) and (c), it shall be an acceptable practice for swap execution facilities that are trading facilities and designated contract markets to adopt, enforce, and establish rules and procedures for monitoring and enforcing single-month and all-months-combined position limits at levels no greater than ten percent of the average delta-adjusted futures, swaps, and options month-end all months open interest in the same contract or economically equivalent contracts executed pursuant to the rules of the designated contract market or swap execution facility that is a trading facility for the greater of the most recent one or two calendar years up to 25,000 contracts with a marginal increase of 2.5 percent thereafter.

(3) *Levels at designation or initial listing.* Other than in Referenced Contracts, at the time of its initial designation or upon offering a new contract, agreement, or transaction to be executed pursuant to its rules, it shall be an acceptable practice for a designated contract market or swap execution facility that is a trading facility to provide for speculative limits for an individual single-month or in all-months-combined at no greater than 1,000 contracts for physical commodities other than energy commodities and 5,000 contracts for other commodities, *provided that* the notional quantity for such contracts, agreements, or transactions, corresponds to a notional quantity per contract that is no larger than a typical cash market transaction in the underlying commodity.

(4) For purposes of this paragraph, it shall be an acceptable practice for open

interest to be calculated by combining the all months month-end open interest in the same contract or economically equivalent contracts executed pursuant to the rules of the designated contract market or swap execution facility that is a trading facility (on a delta-adjusted basis, as appropriate) for all months listed during the most recent one or two calendar years.

(c) *Alternatives.* In lieu of the limits provided for under § 151.11(a)(2) or (b)(2), it shall be an acceptable practice for swap execution facilities that are trading facilities and designated contract markets to adopt, enforce, and establish rules and procedures for monitoring and enforcing position accountability rules with respect to any agreement, contract, or transaction executed pursuant to their rules requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's position upon request by the exchange as follows:

(1) On an agricultural or exempt commodity that is not subject to the limits set forth in § 151.4, having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, *provided, however*, such swap execution facilities that are trading facilities and designated contract markets are not exempt from the requirement set forth in paragraph (a)(2) that they adopt a spot-month position limit with a level no greater than 25 percent of estimated deliverable supply; or

(2) On a major foreign currency, for which there is no legal impediment to delivery and for which there exists a highly liquid cash market; or

(3) On an excluded commodity that is an index or measure of inflation, or other macroeconomic index or measure; or

(4) On an excluded commodity that meets the definition of section 1a(19)(ii), (iii), or (iv) of the Act.

(d) *Securities futures products.* Position limits for securities futures products are specified in 17 CFR part 41.

(e) *Aggregation.* Position limits or accountability rules established under this section shall be subject to the aggregation standards of § 151.7.

(f) *Exemptions—(1) Hedge exemptions.*

(i) For purposes of exempt and agricultural commodities, no designated contract market or swap execution facility that is a trading facility bylaw, rule, regulation, or resolution adopted pursuant to this section shall apply to any position that would otherwise be exempt from the applicable Federal speculative position limits as determined by § 151.5; *provided, however*, that the designated contract market or swap execution facility that is a trading facility may limit bona fide hedging positions or any other positions which have been exempted pursuant to § 151.5 which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(ii) For purposes of excluded commodities, no designated contract market or swap execution facility that is a trading facility by law, rule, regulation, or resolution adopted pursuant to this section shall apply to any transaction or position defined under § 1.3(z) of this chapter; *provided, however*, that the designated contract market or swap execution facility that is a trading facility may limit bona fide hedging positions that it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(2) *Procedure.* Persons seeking to establish eligibility for an exemption must comply with the procedures of the designated contract market or swap execution facility that is a trading facility for granting exemptions from its speculative position limit rules. In considering whether to permit or grant an exemption, a designated contract market or swap execution facility that is a trading facility must take into account sound commercial practices and paragraph (d)(1) of this section and apply principles consistent with § 151.5.

(g) *Other exemptions.* Speculative position limits adopted pursuant to this section shall not apply to:

(1) Any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit;

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(2) Spread or arbitrage positions either in positions in related Referenced Contracts or, for contracts that are not Referenced Contracts, economically equivalent contracts *provided that* such positions are outside of the spot month for physical-delivery contracts; or

(3) Any person that is registered as a futures commission merchant or floor broker under authority of the Act, except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person.

(h) *Ongoing responsibilities.* Nothing in this part shall be construed to affect any provisions of the Act relating to manipulation or corners or to relieve any designated contract market, swap execution facility that is a trading facility, or governing board of a designated contract market or swap execution facility that is a trading facility from its responsibility under other provisions of the Act and regulations.

(i) *Compliance date.* The compliance date of this section shall be 60 days after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010. A document will be published in the FEDERAL REGISTER establishing the compliance date.

(j) Notwithstanding paragraph (i) of this section, the compliance date of provisions of paragraph (b)(1) of this section as it applies to non-legacy Referenced Contracts shall be upon the establishment of any non-spot-month position limits pursuant to § 151.4(d)(3). In the period prior to the establishment of any non-spot-month position limits pursuant to § 151.4(d)(3) it shall be an acceptable practice for a designated contract market or swap execution facility to either:

(1) Retain existing non-spot-month position limits or accountability rules; or

(2) Establish non-spot-month position limits or accountability levels pursuant to the acceptable practice described in § 151.11(b)(2) and (c)(1) based on open interest in the same contract or economically equivalent contracts executed pursuant to the rules of the

designated contract market or swap execution facility that is a trading facility.

§ 151.12 Delegation of authority to the Director of the Division of Market Oversight.

(a) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) In § 151.4(b) for determining levels of open interest, in § 151.4(d)(2)(ii) to estimate deliverable supply, in § 151.4(d)(3)(ii) to fix non-spot-month limits, and in § 151.4(e) to publish position limit levels.

(2) In § 151.5 requesting additional information or determining whether a filing should not be considered as bona fide hedging;

(3) In § 151.6 for accepting alternative position visibility filings under paragraphs (c)(2) and (d) therein;

(4) In § 151.7(h)(2) to call for additional information from a trader claiming an aggregation exemption;

(5) In § 151.10 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(c) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 151.13 Severability.

If any provision of this part, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.